the defence may be filed later. It is common practice for the legal representatives of parties to agree to an extension of time. That course should have been followed in this case, but it does appear that the defendants did nothing about this case for something like a month. That sort of delay cannot be condoned, but that is only one factor to be taken into account. The other factors as I see it in these proceedings are these: There were negotiations, and extension of time for filing a defence should have been treated as a matter of course, as I have suggested several times during the hearing of this appeal. Moreover it is a waste of time to shut out a defence, because immediately judgment was given in default the defendant would apply to set it aside. An order would be granted if there is a defence and the defendant had not, in effect, been refused an opportunity for the court to hear his side of the case. We are concerned only with the application of rules of procedure. These applications should not amount to a denial of the principles of justice. It is for these reasons that extensions of time are usually granted as a matter of course unless there are very strong circumstances to show that these are delaying tactics of some major feature of that nature. Although I do not approve of the delay of a month I cannot regard it as such a strong feature as to deprive the applicant of his opportunity to be heard.

For these reasons I would dismiss this appeal. I think the judge in the court below made a proper order, or rather orders.

Wee Chong Jin C.J. (Singapore): I would also agree that the orders made by the Judge in the court below were properly made and made in proper exercise of his discretion.

Tan Ah Tah F.J.: I agree that the appeal should be dismissed.

Wylie C.J. (Borneo): Appeal will be dismissed with costs.

Usual order with regard to the deposit to the respondents against costs.

Appeal dismissed.

RE BHAGWAN SINGH DECD.

[O.C.J. (Gill J.) July 7, 1964]

[K.L. — Originating Summons No. 104 of 1961]

Conflict of Laws — Domicile — Meaning of — Domicile of choice — Declarations of intention as to change of — Principles to be applied when considering — Domicile distinguished from nationality.

Distribution of estate — Ascertainment of domicile of deceased — Whether distribution according to Hindu or Malayan law.

The deceased was born in Kuala Lumpur on May 15, 1915 and was the son of one Prem Singh who was a British Subject born in India. Prem Singh traded in Kuala Lumpur but died in India. The deceased had his business in Malaya and Singapore and had a fixed place of abode in Kuala Lumpur which was owned by the deceased and the applicant jointly. The deceased spent most of his lifetime in Malaya except for making short visits to India once in about 6 or 7 years.

The applicant commenced these proceedings by way of originating summons as the administrator of the estate of the deceased for the determination of the question whether the deceased at the time of his death was domiciled in Malaya or India. Affidavits were filed by the applicant and the second respondent (a son of the deceased) in which they exhibited copies of letters and telegrams sent by the deceased after the last war which according to them showed that it was the deceased's intention to retire and settle down in India.

Held: (1) all the circumstances of the deceased's life indicated that he intended permanently to live in Malaya and that he acquired a domicile of choice in Malaya before the last war;

(2) although the affidavits filed in the proceedings contained some evidence of the deceased's declarations of intention on the question of a further change of his domicile, these did not amount to an abandonment of the domicile of choice.

Cases referred to:—

(1) *Whicker* v. *Hume* (1858) 7 H.L.C. 126, 160.

(2) *Craignish* v. *Hewitt* [1892] 3 Ch. 180, 192.

(3) *Moorhouse* v. *Lord* (1863) 10 H.L.C. 272.

(4) *Winans* v. *A.G.* [1904] A.C. 287.

(5) *Ramsay* v. *Liverpool Royal Infirmary* [1930] A.C. 588.

(6) *Moore* v. *Darell and Budd* (1832) 4 Hog. Ecc. 346, 162 E.R. 1472.

(7) *Ross* v. *Ross* [1930] A.C. 1.

(8) *Boldrini* v. *Boldrini and Martini* [1932] Prob. 9, 15.

ORIGINATING SUMMONS.

Morris Edgar for the applicant.

N. A. Marjoribanks for the 1st and 3rd respondents.

L. P. Thean for the 4th and 5th respondents.

Respondent No. 2 absent.

Cur. Adv. Vult.

Gill J.: These proceedings by way of originating summons have been brought by the applicant as the administrator of the estate of Bhagwan Singh s/o Prem Singh deceased for the determination by the court of the question as to whether the said deceased at the time of his death was domiciled in Malaya or in India, the country of his origin. Arising out of the answer to this question is the further question whether, in the event of a finding by the court that the deceased was domiciled in India, his estate may be distributed in accordance with the formula set out in the affidavit of Harnam Singh which is exhibited to the affidavit of the applicant filed in support of these proceedings.

The deceased was born on the 15th of May, 1915 in Kuala Lumpur and was the son of one Prem Singh, who was a British subject born in

India. Prem Singh traded in Kuala Lumpur but died in India. The deceased spent most of his lifetime in Malaya except for making short visits to India once in about every six or seven years. Indeed it has been stated by the third respondent, a daughter of the deceased, in her affidavit of 2nd June, 1962 that according to her information the deceased went to India only once in the later part of 1936 or the early part of 1937 for the purpose of getting married and that he did not go to India at any time thereafter up to the time of his death on 30th December, 1947. The applicant, who is a brother of the deceased, has stated in his affidavit of 14th May, 1964 that the deceased last visited India in 1937 and that he got married in India on 3rd May, 1937.

The deceased carried on business as a partner in the firm of Messrs. Gian Singh & Co., Kuala Lumpur, and also in the Singapore firm of Pritam Singh & Co. At the time of his death he had a fixed place of abode at 26 Jalan Haji Hussein, off Perkins Road, Kuala Lumpur. This house was apparently partnership property and was registered in the names of the deceased and the applicant.

The deceased lived in this country during the Japanese occupation period and, like the other inhabitants of this country, he undoubtedly went through a great deal of hardship. The second respondent, who is a son of the deceased, has filed an affidavit in these proceedings to say that because his father was badly treated by the Japanese he wished to return to and settle in India. To this affidavit he has exhibited a photostat excerpt of an undated letter written by his father to Pritam Singh in India and photostat copies of two telegrams from his father to India. The letter spoke of the atrocities committed by the Japanese and of the robbery committed by the Japanese of the goods belonging to Gian Singh & Co. and ended by asking Pritam Singh to send whatever goods he could find in India to enable the company to re-establish itself, and one of the telegrams implored Pritam Singh not to sell any immovable property in India. However, there is nothing in the letter or the telegrams to suggest that the deceased at that time was contemplating to leave Malaya to settle down permanently in India.

The applicant in his affidavit in support of these proceedings dated the 13th May, 1961 states that the deceased was an Indian subject at the time of his death and that his domicile of origin was India. He states further that to the best of his knowledge, information and belief it was the deceased's intention to retire and settle down in India. He goes on to say that he remembers receiving from the deceased a letter dated 31st December, 1945, addressed to him, which has been lost or mislaid. He has, however, attached a copy of an extract from the letter which reads as follows:—

> "Our wish is that you invest some of the money in taking a bungalow house adjacent to where Indersingh Balwantsingh are staying at Amritsar, as our desire is to stay at Amritsar, and make it a permanent residence. The family will all be together and Amritsar is I think an ideal place. Please do take a place adjacent to the bungalow that they are making and if possible give similar contract immediately you get this letter. You have not replied to our telegram in which we have written advising you not to sell the property at Khangahdogran. We wish to remind you that this is not to be sold under any circumstances as all family people are very much upset. Even if we are not staying there at present, please leave it as it is, and don't consider this property in terms of business, as it is ancestral place and built by Mr. Gian Singh himself. In case all of you are really bent upon disposing this property, please inform me and put it in my and Ajit Singh's name. We shall be ever so glad to pay you Rs 14,000 or so. On hearing this, mother and all are really very very upset. Please do not even propose to anybody in the future."

Such evidence as may be gleaned from this undated letter of the deceased to the applicant indicates that he wished to retain whatever ancestral property there was in India and perhaps ultimately to make a permanent residence for himself and his family there. Here again, however, there is nothing to suggest that the deceased was contemplating at that time to return to India. The sole object of the letter appears to have been to impress upon Pritam Singh not to sell any ancestral property in India, thereby upsetting family people.

Whatever the deceased may have said in his letters or in his telegrams he took no steps to wind up his affairs in Malaya with a view to returning to India. Not long after the liberation of this country by the British, great political changes began to take place in India. The country was partitioned at the time of its independence, and that part of India from where the deceased's father came became part of Pakistan. The first respondent, who is the widow of the deceased, says in her affidavit of 2nd June, 1962 that her late husband never said during his lifetime that he would go to India and live there. She goes on to say that after the partition of India in the middle of 1947 he told her that in view of the fact that his part of the country was within Pakistan, he would never go there again.

Two other affidavits have been filed in these proceedings as regards the intention of the deceased never to return to India. The first is by Pritam Singh s/o Kesar Singh, who says that he was a friend of the deceased from 1935 to the date of his death. He goes on to say that he went to India in 1946 and returned to Malaya in 1947, after which he and the deceased used to meet each other almost every day and talk of matters regarding the partition of India. After the partition of India the deceased's home town

became part of Pakistan territory and Sikh and Hindu residents of that area fled to India as refugees. The affidavit goes on to say that the deceased brought his brother-in-law to Malaya to enable him to settle down in this country and that he distinctly told the deponent that he was definitely making Malaya his permanent residence.

The second affidavit is by one Sarban Singh s/o Jawahar Singh, who says that he knew the deceased from 1937 as they were both active members and officials of the Malayan Sikh Union. During the occupation period they were arrested by the Japanese and imprisoned for about two months. According to him, the deceased was the President of the Malayan Sikh Union and a member of the Rent Control Board, Kuala Lumpur in 1947. This deponent goes on to say that when India was about to be partitioned, he used to discuss with the deceased the affairs of the Sikh community and Sikh temples which were going to be left in that part of India which was going to become Pakistan territory. He says further that he particularly remembers the deceased informing him that as his home town had become part of Pakistan territory he was making Malaya his permanent home instead of becoming a refugee in India.

I have stated briefly the facts relating to the deceased's life up to the time of his death. With a view to determining the question which has been posed to me, it would be appropriate if at this stage I state such general principles of the law relating to domicile as are applicable to this case. The question which arises at the very outset of the inquiry is, what is domicile? I think I will be correct in saying that there is no definition of the word "domicile" which is not open to some sort of criticism. For this reason it has been said that the term "domicile" lends itself to illustration but not to definition, unless one is content to define it as "permanent home". In *Whicker* v. *Hume* [1] Lord Cranworth said:—

> "By domicile we mean home, the permanent home; and if you do not understand your permanent home, I am afraid that no illustrations drawn from foreign writers or foreign languages will very much help you to it."

Chitty J. in *Craignish* v. *Hewitt* [2] says:—

> "That place is properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom."

Thus, the domicile of a person is that country in which he either has or is deemed by law to have his permanent home. The notion which lies at the root of the concept of domicile is that of permanent home, so that in order to acquire a domicile in a country a person must intend to reside in it permanently or indefinitely.

The object of determining a person's domicile is to connect that person with some system of law. It therefore follows that he cannot have more than one domicile. For the same reason the law attributes to every person a domicile at birth which is called the domicile of origin, and a legitimate child born during the subsistence of the marriage of his parents has his domicile of origin in the country in which his father was domiciled at the time of his birth. The domicile of origin changes with the domicile of the person upon whom the child is dependant during the period of his infancy, and on attaining his majority he retains the last domicile which he had during his infancy until he changes it.

The father of the deceased in this case was born in India and died in India although he traded in this country. There can therefore be very little doubt that he was domiciled in India. The deceased in this case acquired his father's domicile at birth. The question which I have now to consider is whether he acquired a domicile of choice after attaining his majority in May 1936. The general rule as to change of domicile is that any person not under disability may at any time change his existing domicile and acquire for himself a domicile of choice by the fact of residing in a country other than that of his domicile of origin with the intention of continuing to reside there indefinitely.

In determining a person's domicile, the Court has to have regard to two rather contradictory presumptions of law. In the first place, there is a very strong presumption that the domicile of origin is retained (see *Moorhouse* v. *Lord*,[3] *Winans* v. *A. G.*,[4] *Ramsay* v. *Liverpool Royal Infirmary*.[5]) In the second place, a person is presumed to be domiciled in the country in which he resides. In this connection, long residence is *prima facie* evidence of an intention to establish a change of domicile. The longer the residence lasts the stronger becomes the presumption, and in fact it may be so long and continuous that, despite declarations by the resident of a contrary intention, it will raise a presumption that cannot be rebutted except by actual removal to a new place of residence. Thus, in *Moore* v. *Darell and Budd* [6] the father of the deceased was a British subject who resided for several years up to his death in Ireland and had purchased property there. The deceased, though occasionally claiming the privileges of a British subject and visiting England, was born, educated and established as a merchant in Spain, in which country he died. It was held that the deceased clearly was domiciled in Spain, and consequently that the law of Spain was to govern the disposition of his property.

The facts in the present case are not very dissimilar from the facts in *Moore* v. *Darell and Budd, supra*. The deceased was born in Malaya,

had his business in Malaya and lived with his family all his life in Malaya in a house in Kuala Lumpur which was owned by him jointly with the applicant. He had very little connection with India, apart from his short and infrequent visits there. Undoubtedly he had some sentimental links with the country of his origin and was extremely reluctant to sell his ancestral property in that country, but all the other circumstances of his life clearly indicate that he intended permanently to live in Malaya. I am therefore of the opinion that even before the last war he had acquired a domicile of choice in Malaya.

As I have stated above, the deceased lived in Malaya during the Japanese occupation period. In view of what happened during this period, it may well be that he seriously thought about returning to India at the end of the war, but in point of fact when the war was over he was more concerned about the rehabilitation of his business which had been destroyed during the occupation than about returning to India. The affidavits filed in these proceedings contain some evidence of his declarations of intention on the question of a further change in his domicile. The attitude to be adopted when considering such declarations of intention has been stated in *Ross* v. *Ross* [7] as follows:—

"Declarations as to intention are rightly regarded in determining the question of a change of domicile, but they must be examined by considering the persons to whom, the purposes for which, and the circumstances in which they are made, and they must further be fortified and carried into effect by conduct and action consistent with the declared expression."

For the purpose of this case I assume that all such declarations were in fact made but in my opinion they did not amount to an abandonment of the domicile of choice. On the contrary the deceased's declaration shortly before and after the partition of India, which resulted in his home town in India becoming part of Pakistan territory, clearly showed that at that stage he had completely abandoned the idea of going back to India. Even if I disregard his declarations of intention in this connection, I find nothing in the conduct and action of the deceased which may be said to be consistent with his intention of ultimately making a permanent home in India. The law on this point quite clearly is that a person who has formed the intention of leaving a country does not cease to have his home in that country until he acts according to the intention. In other words a domicile of choice continues until it is abandoned. It is divested only when the country of domicile has been actually abandoned with the intention of abandoning it forever.

It has been stated by the applicant in his affidavit that the deceased at the time of his death was a British subject, but this fact merely determines the political status or nationality of the deceased. Nationality and domicile are two different conceptions and a man may change his domicile without divesting himself of his nationality (see *Boldrini* v. *Boldrini and Martini* [8]).

For the reasons which I have stated I have come to the conclusion that the deceased was domiciled in this country and that his estate must be administered according to Malayan law. The costs of all parties as between solicitor and client to be taxed on the higher scale and paid out of the estate.

Order accordingly.

Solicitors: *Morris Edgar & Co.; Lovelace & Hastings; Shook Lin & Bok.*

LEE LIAN CHOO v. LEE KAR CHOO

[F.C. (Barakbah Ag.L.P., Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) July 8, 1964]

[K.L. — Federal Court Civil Appeal No. 7 of 1964]

Practice and Procedure — Application for extention of time — Non-inclusion of Order of Court in record of appeal — Order of Court served on previous solicitor and not on solicitor on record — Whether application should be granted.

Practice and Procedure — Affidavit — Contents — Preliminary objections — R.S.C. O. 38 rr. 7 and 10.

Practice and Procedure — Change of solicitors — Documents — Service of.

On an application made by the appellant for extention of time for inclusion of a copy of a certain Order of Court which was taken out but not included in the record of appeal which was originally filed because the solicitors for the respondent had served it on the previous solicitor and not on the solicitor whose name appeared on the record it was held that the application should be granted.

Where there has been a change of solicitors and the new solicitor has given proper notice to the solicitor on the other side, the latter should serve all documents on the new solicitor whose name has appeared on the record.

The commentary on O. 38 r. 7 in *Mallal's* Supreme Court Practice (p. 510) relating to dates in affidavit merely means that the date itself should be in figures; months need not be in figures, but can be shown in words.

FEDERAL COURT.

L. A. J. Smith for the appellant.

Dato' S. M. Yong for the respondent.

Tan Ah Tah F.J. (delivering oral judgment): This is an application for extension of time made on behalf of the appellant. The objection raised by counsel for the respondent is based on various grounds. One ground is that the affidavit filed on behalf of the appellant should not be looked at because it has not complied with certain rules of the court. For example, it was said that the dates which appeared in the affidavit should have been in figures and according to counsel for the respondent the date 22nd February 1964 should